

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GLEN GILLESPIE,

Case No. 3:16-cv-00260-MMD-VPC

Plaintiff,

ORDER

v.

NEVADA DEPARTMENT OF
CORRECTIONS,

Defendant.

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On May 23, 2016, the Court issued an order which: (1) directed Plaintiff to file a fully completed financial certificate within thirty (30) days, and (2) dismissed the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty (30) days. (ECF No. 3 at 9-10.) The thirty-day period has now expired, and Plaintiff has not filed a completed financial certificate, an amended complaint, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
2 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
3 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
4 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
5 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
6 for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to
8 obey a court order, or failure to comply with local rules, the court must consider several
9 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
10 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
11 favoring disposition of cases on their merits; and (5) the availability of less drastic
12 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
13 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in
15 expeditiously resolving this litigation and the Court's interest in managing the docket,
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
17 in favor of dismissal, since a presumption of injury arises from the occurrence of
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
19 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
20 policy favoring disposition of cases on their merits — is greatly outweighed by the
21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that
22 his failure to obey the court's order will result in dismissal satisfies the "consideration of
23 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
24 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file a completed
25 financial certificate and an amended complaint within thirty (30) days expressly stated:
26 "It is further ordered that if Plaintiff does not timely file a financial certificate, dismissal of
27 this action may result" and "[i]t is further ordered that if Plaintiff fails to file an amended
28 complaint curing the deficiencies outlined in this order, this action will be dismissed


1 without prejudice.” (ECF No. 3 at 9-10). Thus, Plaintiff had adequate warning that
2 dismissal would result from his noncompliance with the Court’s order to file a fully
3 completed financial certificate and an amended complaint within thirty (30) days.

4 It is therefore ordered that this action is dismissed without prejudice based on
5 Plaintiff’s failure to file a fully completed financial certificate and an amended complaint
6 in compliance with this Court’s May 23, 2016, order.

7 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is
8 denied as moot.

9 It is further ordered that the Clerk of Court enter judgment accordingly.

10 DATED THIS 12th day of July 2016.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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